

**REMARKS**

Claims 1 and 29 – 41 were pending. Claims have been amended to correct minor typographical errors, to correct improper multiple dependent claims, and to comply with the previous restriction requirement. New claims 42 – 46, directed to certain compounds of Example 22 of the specification, have been added. Therefore, upon entry of the present amendment, claims 1 and 29 – 46 will be in the case. Support for the amendment of the claims may be found in the application as filed, and no new matter has been added by this amendment. Amendment of the claims is not to be construed as an acquiescence to any of the objections/rejections set forth in the instant Office Action, and was done solely to expedite prosecution of the application. Applicants reserve the right to pursue the claims as originally filed, or similar claims, in this or one or more subsequent patent applications.

***Allowable Subject Matter***

Applicants acknowledge and sincerely thank the Examiner for his determination that claim 33 is allowed. Applicants respectfully submit that the other pending claims are also allowable and earnestly request reconsideration and withdrawal of the outstanding rejections.

***Claim Rejections***

Claims 1, 29 – 32, and 34 – 41 are rejected as being drawn to an improper Markush Group. The restriction requirement set forth in paper number 6 has been maintained, and the claims have been examined only to the extent that they read on the elected invention, namely the compounds of the claims listed above wherein the heterocycle is a purine. The claims have been amended to conform to the Examiner's proposal that "[c]ancellation of the non-elected subject matter will overcome the rejection." Therefore, this rejection is believed to be moot.

Claims 35 – 37 and 40 – 41 are rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter that is alleged to be not enabled. In particular, the Office Action asserts that the rejected "claims are drawn to the treatment of viruses generally. No such feat has ever been accomplished." (The Office Action actually states that claims "37 – 37 and 40 – 41" are rejected, however the Examiner confirmed via telephone on January 21, 2003 that the rejection is intended to apply to claims 35 and 36 also.) However, the Office Action proposes that the claim language of claim 9 of U.S. Patent No. 6,352,991 (corresponding to the parent of

this continuation application) would overcome this rejection. Applicants believe that the submitted amendment to claim 9 fully addresses the outstanding rejection.

Claim 1 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for lacking a structural formula. Applicants thank the Examiner for drawing their attention to this inadvertent error, which has been corrected in the amendment to claim 1.

Claim 31 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite because the fourth chemical entity “is a molecule, not a moiety, and hence it has no point of attachment.” Applicants submit that amendment of the term “2,6-diaminopurine” to “2,6-diaminopurine-N<sup>9</sup>-yl” in claim 31 overcomes this rejection.

Indeed, Applicants submit that all of the pending claims are in condition for allowance and therefore respectfully request reconsideration of the application.

### ***Double Patenting***

Claims 1, 29 – 30, and 34 – 41 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 – 17 of U.S. Patent No. 6,352,991, because, “[a]lthough the conflicting claims are not identical, they are not patentably distinct from each . . . These claims are just a broader version of the claims of the parent.” Applicants acknowledge this double patenting rejection and will consider filing a terminal disclaimer as suggested by the Examiner upon a finding that the claims are otherwise in condition for allowance.

**CONCLUSION**

For all of the foregoing reasons, Applicants respectfully request allowance of the pending claims. Cancellation of or amendments to the claims should in no way be construed as an acquiescence to any of the Examiner's objections or rejections. Such cancellation or amendment of the claims is being made solely to expedite prosecution of this application. Applicants reserve the option to further prosecute the same or similar claims in the present or another patent application.

If a telephone conversation with Applicants' representative would expedite the prosecution of the subject application, the Examiner is urged to call the undersigned at (617) 227-7400.

Please charge our Deposit Account No. 12-0080 for any fees associated with processing or entry of this submission.

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